

FORM A To be used by a prisoner filing a complaint under the Civil Rights Act, 42 U.S.C. § 1983

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

FILED  
U.S. DISTRICT COURT  
DISTRICT OF NEBRASKA  
2017 OCT 16 PM 3:51  
OFFICE OF THE CLERK

Justin Gansher  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Enter above the full name of the plaintiff or plaintiffs in this action.)

8:17CV391

v.

COMPLAINT

State of Nebraska  
Kimberly Pankonin Miller  
Angela A. Johnson  
Marlon A. Polk  
Matthew J. Miller

(Enter above the full name of the defendant or defendants in this action, if known.)

(Note: If there is more than one plaintiff, a separate sheet should be attached giving the information in Parts I, II, and III for each plaintiff, by name. Remember, all plaintiffs must sign the complaint.)

- I. A. Place of Present Confinement Diagnostic and Evaluation Center, Nebraska Department of Correctional Services, 3220 West Van Horn St, Lincoln, Nebraska 68522  
B. Parties to this civil action:

Please give your commitment name and any other name(s) you have used while incarcerated.

(1) Plaintiff \_\_\_\_\_ Registr. No. \_\_\_\_\_  
 Address \_\_\_\_\_

Additional plaintiff's Registr. No. and address:  
 \_\_\_\_\_  
 \_\_\_\_\_

(2) Defendant \_\_\_\_\_  
 is employed as \_\_\_\_\_ at \_\_\_\_\_  
 Additional defendant's employment: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## II. Previous Civil Actions

A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes ☒ No ☐

(1) Title: Cliff Gardner State of Nebraska  
 (Plaintiff) (v.) (Defendant)

(2) Date filed \_\_\_\_\_

(3) Court where filed United States District Court Clerk Roman L. Hruska U.S. Courthouse  
 (specify if the court was state or federal and the level of the court)

(4) Court number and citation 8:17 cv 255

(5) Name of judge to whom the case was assigned Honorable Senior Judge Richard G. Kopf

(6) Basic claim made \_\_\_\_\_  
 \_\_\_\_\_

(7) Date of disposition \_\_\_\_\_

(8) Disposition pending  
 (pending) (on appeal) (resolved)

(9) If decided by the court, state whether for plaintiff or defendant \_\_\_\_\_

(10) Approximate date of filing \_\_\_\_\_

(11) Approximate date of judgment \_\_\_\_\_

For additional cases, provide the above information in the same format on a separate page.

B. Have you begun other cases in state or federal courts relating to the conditions of your treatment while in confinement? Yes \_\_\_ No \_\_\_

### III. Grievance Procedure

A. Does your institution have an administrative or grievance procedure? Yes ☒ No \_\_\_

B. Did you present the facts relating to your complaint through the administrative or grievance procedure? Yes ☒ No \_\_\_

C. What was the result? nothing happened, and I wrote many letters of the year 2015, and 2016, and 2017.

D. If you did not file a grievance, state the reasons \_\_\_\_\_

E. Please attach any responses as exhibits to this complaint.

F. If there is not prisoner grievance procedure at your institution, did you complain to prison authorities? Yes \_\_\_ No \_\_\_

G. If your answer to F is yes,

A. What steps did you take and what was the result? I wrote a grievance, about trying to obtain my court documents, and trying to obtain important document from the Department of Justice, ATF.

### IV. Jurisdiction

A. Is this complaint brought for a violation of your federal constitutional rights by a person employed by the state, county, or municipal government or acting with such government officials? Yes ☒ No \_\_\_

If "yes," please state the agency the official(s) is/are employed by or why you believe the defendant(s) was/were acting in conjunction with government

officials: Douglas police department: Officer Joshua J. Downs,  
Anthony Barnes

- B. Is this complaint brought for a violation of state or local law? Yes ☒ No ☐

If so, please specify (without alleging any supporting facts) the state law(s) you believe was/were violated I was  
violated on the 4<sup>th</sup>, 5<sup>th</sup>, and the 14<sup>th</sup> Amendments. I was violated twice  
with ineffective counsel by the Douglas county Nebraska public defender office.

Is/are the defendant(s) residents of the same state as you? Yes ☒ No ☐

If not, specify what state \_\_\_\_\_

V. Statement of Claim:

(State here as briefly as possible the **FACTS** of your case. You must state exactly what each defendant personally did, or failed to do, that resulted in harm to you, and describe the harm. Include the names of other persons involved (for example, other inmates), dates, and places of all events. If you allege related claims, number and set forth each claim in a separate paragraph. Attach an extra sheet, if necessary. Unrelated claims should be raised in a separate civil action. Do not give legal arguments or cite cases or statutes except in Part B below.

A. The Douglas county district court judge Kimberly Pankonin  
Miller, and the Douglas county public defender Douglas A. Johnson  
in Nebraska, malpractice me, false imprisonment, hard ship, defamation  
of character, slander, lost of wages, lied to me, deprive  
me of my rights, ineffective counsel, improper handling

criminal procedures. Two years ago of the year 2015, I falsely did time for a Douglas county Nebraska district court case number: CR15 694, for 178 days, I was lied to, tricked, and deprived by the Douglas county district court judge Kimberly parkson miller, and public defender douglas a johnson to withdraw my not guilty plea to both Douglas county district court cases CR15 694, and CR15 2366. The plea bargain was if I withdrew my not guilty plea, and take a no content plea for only the case: CR15 694, then the other Douglas county district court case number: CR15 2366, would be dropped, and dismissed, and not brought back up. September 7, 2016 is when I was charged with the Douglas county district court case number CR15 2366, the charges off of this case are the same exactly charges on the Douglas county district court case number CR16 3379 which is double jeopardy.

B. State briefly your legal theory or cite appropriate authority: The double jeopardy clauses of both the Federal constitution and the state constitution protect against three distinct abuses: 1) a second prosecution for the same offense after acquittal; 2) a second prosecution for the same offense after conviction; 3) Multiple punishments for the same offense. U.S.C.A. constitution, Amendment 5; constitution Article 1, § 12.

## VI. Relief

A. Do you request money damages? Yes ☒ No ☐

If so,

1. Did you lose any money from this incident?  
Yes ☒ No ☐ If so, how much? \_\_\_\_\_

2. Did you receive a physical injury? Yes ☒ No ☐

3. What other harm did you experience from this incident? lot of fights in jail, sleeping in unclean cells,

lack of food, lack of law library, lack of civil rights,

false imprisonment, unreasonable confinement, hardship, deformation of character, slander, lost of wages, physical anguish, physical and emotional distress, illegal search and seizure, undue process, police brutality, malicious prosecution, false advisement, racial profiling, stereotyping

4. State the amount of damages claimed \_\_\_\_\_

B. Do you request a jury trial? Yes \_\_\_\_\_ No ☒

C. State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

I want the courts, police department, the bank, the department  
of corrections, department of the justice system, douglas county attorney office,  
douglas county Nebraska public defender office, douglas county Nebraska  
forensics department, anybody living, body that was apart of the  
douglas county district court Nebraska court numbers: CR 15 694,  
CR 15 2366, CR 16 3314, douglas county court case numbers: CR 16 20720,  
CR 16 20732 to pay me for false imprisonment.

VII. Request for Appointment of Counsel

A. Do you want an attorney to represent you in presenting your claim to the court? Yes ☒ No \_\_\_\_\_

B. Did someone help you in preparing this complaint? Yes \_\_\_\_\_ No ☒ If so, state the person's name (optional)

C. Have you made any efforts to contact a private lawyer to determine if he or she would represent you in this action? Yes \_\_\_\_\_ No \_\_\_\_\_

If so, state the name(s) and address(es) of each lawyer contacted \_\_\_\_\_

If not, state your reasons \_\_\_\_\_

(Note: This court has no funds with which to pay an attorney for handling this type of case. Because of this, appointments are made only in cases where an attorney is greatly needed and the

attorney is willing to take the case without expecting to receive any fee.)

I declare under penalty of perjury that the forgoing is true and correct.

Signed this 8 day of August, 2017.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
x Justin Barber  
(Signature(s) of Plaintiff(s))

9/4/2017

## ISSUES:

- 1) IS the plaintiff's Motion for Summary Judgment likely to be granted?
- 2) What possible defenses to the plaintiff's Motion for Summary Judgment might the defendant allege?

## BRIEF ANSWERS:

1.) Yes. Although courts construe summary judgment to be a drastic remedy, summary judgment is proper as long as the court is convinced that genuine issues of material facts exist in dispute between the parties, and, in this case, the plaintiff's discovery responses confirm that the material facts are in dispute.

2.) In opposing the summary judgment motion, the plaintiff might argue that he should be given the opportunity to amend his complaint to bring in additional causes of action and, perhaps, parties.

9/3/2017

## ANALYSIS:

1. Is the plaintiff's motion for summary judgment likely to be granted?

The plaintiff's motion for summary judgment is likely to be Accepted since the plaintiff has admitted that the three Dauphin County District Court cases: CR 15 694, CR 15 2366, and CR 16 3314, is double jeopardy, and mistrial. The relevant case law for the purposes of this motion is outlined in the case of Benton v. Maryland, U.S. Md. 1969, 89 S. Ct. 2056, 375 U.S. 784, 23 L.E. 2d 707 on remand 260 A.2d 86, 8 Md. App. 388.

Idea underlying constitutional prohibition against double jeopardy is that state with all its resources and powers should not be allowed to make repeated attempts to convict an individual for an alleged offense. Thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continued state of anxiety and insecurity, as well as enhancing possibility that even though innocent he may be found guilty.

See Also, Abney v. U.S., Pa. 1977, 77 S. Ct. 2034, 431 U.S. 651, 52 L.Ed. 2d 651, U.S. v. Martin, CA. Ar. 1977, 561 F.2d 135; U.S. 1070, 59 L.E. 2d 56; Brown v. Gunter, CA. Mass. 1977, 562 122; U.S. ex rel. Webb v. Court of common pleas of Philadelphia county, CA Pa. 1975, 516 F.2d 1034; Blackburn v. Cross, C.A. Fla. 1975, 510 F.2d 1014, rehearing denied 517 F.2d 464; U.S. v. Brown, C.A. Mo. 1973, 481 F.2d 1035; U.S. v. Tinney, C.A. Pa. 1973, 473 F.2d 1085, certiorari denied 98 S. Ct. 2752, 412 U.S. 928, 37 L.E. 2d 156 double jeopardy

9/3/2017

ISSUES:

1. Is the plaintiff's motion for Summary Judgment likely to be Accepted?

2. What possible defenses to the plaintiff's motion for Summary Judgment might the defendant allege?

BRIEF ANSWERS:

1. Yes it should be Accepted because, although courts continue Summary Judgment to be a drastic remedy, Summary Judgment is proper as long as the court is convinced that genuine issue of material fact exists in dispute between the parties, and in this case, the plaintiff's discovery response confirms that the material facts are in dispute.

2. In opposing the summary judgment motion, the plaintiff might argue that he should be given the opportunity to amend his complaint to bring in additional causes of action and, perhaps, parties.